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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/687,130	10/12/2000	Robert Alan Cochran	10992807-1	1247
7590	03/25/2004		EXAMINER	
			TO, BAOQUOC N	
			ART UNIT	PAPER NUMBER
			2172	10
DATE MAILED: 03/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/687,130	COCHRAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Baoquoc N To	2172	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 29 December 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-13 and 15-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-13 and 15-19 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. Claims 1-13 and 15-19 are pending in this application. The Office withdraws the allowance of claims 1-12 in Office Action dated on 10/01/03. The Office regrets any inconveniences due to the applicants.

### ***Response to Arguments***

2. Applicant's arguments with respect to claim 13 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the applicant refers to the logical device or mirror. It is unclear whether the current time stamp is the update time stamp in the second logical device. It is also unclear whether the current count is the updated count in the second logical device. The examiner treats the mirror and the second logical device are the same, the current time stamp and the updated time stamp are the same, and the current count and updated count are the same for examination purposes.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sparks et al. (US. Patent No. 5,212,784) in view of Beier et al. (US. Patent No. 6,065,018).

Regarding on claim 1, Sparks teaches method for backing up a computer-readable object stored on a first logical device unit, the method comprising:

when the object is not currently mirrored to a mass storage device, creating a mirror for the object on a second logical device unit on a mass storage device (pair mirrored) (col. 3, lines 41-43);

when the object and the mirror for the object are split, resyncing the object with the mirror for the object (resynchronizes) (col. 6, lines 5-19);

splitting the object and the mirror for the object so that the mirror becomes a backup copy of the object and so that I/O requests directed to the object are not automatically directed to the mirror (col. 3, lines 46-52);

Sparks does not explicitly teach retrieving a current timestamp from the second logical device and saving it as a saved timestamp; updating the timestamp upon executing any I/O operation directed to the second logical device that alters data stored on the second logical device; when the object is determined to need to be restored from the mirror, retrieving a current timestamp from the second logical device; comparing the

retrieved current timestamp to the saved timestamp; when the current timestamp is equal to the saved timestamp, copying the mirror to the first logical device to replace or again create the object on the first logical device. However, Beier teaches "as part of maintaining the recovery resources, the storage manager 104 or the controller 202 keeps track of the timestamp of the last hierarchical and relational log entries. The hierarchical and relational log entries. The hierarchical time stamp is compared to the last relational log in task 612, then the updates are applied to the hierarchical databases... If the a new time stamp for the last entry to the relational database (relational time stamp) is received within a designated period of time in task 616, then the method 600 again compares the hierarchical database time stamp in task 617 (hierarchical time stamp) with the relational time stamp in task 612, and if the hierarchical is less than or equal to the relational time stamp, the updated log records are applied to the remote site 200 hierarchical database. By assuring that the hierarchical time stamp, the update logs for the hierarchical database and the relational database are able to be synchronized for latter processing" (col. 8, lines 64-67 to col. 9, lines 1-19). This teaches the updating the timestamp and the timestamp comparison process to restore the file. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify updating the timestamp and utilizing the time stamp comparison process of Beier into Sparks in order to restored the data in the most current state.

Regarding on claim 2, Sparks teaches including copying the object to a second backup copy on a difficult-to-modify mass storage device after splitting the object and the mirror for the object (col. 3, lines 30-34).

Regarding on claim 3, Beier teaches when the current timestamp is not equal to the saved timestamp, copying the second backup copy from the difficult-to-modify mass storage device to the first logical device to replace (copy means replace) or again create the object on the first logical device (col. 7, lines 24-51).

Regarding on claim 4, Sparks teaches the mass storage device is one or more hard disk drives and the difficult-to-modify mass storage device is a tape drive (col. 3, line 30-34).

Regarding on claim 5, Beier teaches the first and second logical units are provided by one or more disk array controllers, wherein data stored to the first and second logical units are stored by the one or more disk array controllers on one or more hard disk drives, and wherein the one or more disk array controllers provide timestamps to requesting applications and systems and update the timestamp associated with a logical device upon executing I/O operations directed to the logical device that alters data stored on the logical device (col. 8, lines 64-67 to col. 9, lines 1-18).

Regarding on claim 6, Beier teaches prior to retrieving a current timestamp from the second logical device and saving it as a saved timestamp, enabling time stamping on the second logical device unit (col. 5, lines 49-55), and wherein the timestamp is updated upon executing any 1/0 operation directed to the second logical device that

alters data stored on the second logical device only when timestamping is enabled on the second logical device unit (col. 8, lines 64-67 to col. 9, lines 1-18).

Regarding on claim 8, Sparks teaches including copying the object to a second backup copy on a difficult-to-modify mass storage device after splitting the object and the mirror for the object (col. 3, lines 33-54).

Regarding on claim 9, Sakuraba teaches the current count is not equal to the saved count, copying the second backup copy from the difficult-to-modify mass storage device to the first logical device to replace or again create the object on the first storage device (col. 9, lines 61-66).

Regarding on claim 10, Sparks teaches the mass storage device is one or more hard disk drives and the difficult-to-modify mass storage device is a tap drive (col. 3, line 30-33).

Regarding on claim 11, Sakuraba teaches the first and second logical (online database) unit are provided by one or more disk array controller, wherein data stored on the first and second logical units are stored by the one or more disk array controller on one or more hard disk drives, and wherein the one or more disk array controller provide counts to requesting application and systems and increment the count associated with a logical device upon executing I/O operations directed to the logical device that alters data stored on the logical device (col. 9, lines 61-66).

Regarding on claim 12, Sakuraba teaches prior to retrieving a current count from the second logical device and saving it as a saved count, enabling counting on the second logical device unit, and wherein the count is updated upon executing any I/O

operation directed to the second logical device that alters data stored on the second logical device only when counting in enable on the second logical device unit (col. 9, lines 61-66).

5. Claims 13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter et al. (US. Patent No. 5,909,540) in view of Beier et al. (US. Patent No. 6,56,018).

Regarding on claim 13, Carter teaches a mass storage device that provides logical device units to accessing computers, the mass storage device comprising:

A medium for storing data (storage devices e.g., hard disks) (col. 8, lines 20-21);

A data writing device and reading device for writing data to medium and reading data from the medium (to store and retrieve data to and from the one or more persistent storage memory devices) (col. 7, lines 10-14);

Memory (memory) (col. 7, lines 8-10) and logic processing components (logical volumes) (col. 10, lines 20-28); and

A controller that executes (data control program 32a) within a logic processing component and controls reading and writing of data to and from the memory and to and from the medium (the data control program 32a can stream data to, and collect the data from, the shared memory subsystem) (col. 7, lines 27-29), the controller providing, in addition to execution I/O operations, including execution of read and write operations to and from logical device units to a mirror object stored on a second logical device unit (the replication controller for generating a copy, or select number of copies...and storing the copy in the local persistence memory device of a second computer) (col. 18, lines 3-

8) and a current state metric for each logical device unit that can be requested by an accessing computer , the controller updating the current state metric for a logical device unit whenever the controller executes an I/O operation that changes the data (stored file metadata, such as the file time stamps and file size, can be updated quite frequently, making the metadata update more expensive) (col. 10, lines 46-49), stored on the medium for storing data copy in the local persistence memory device of a second computer) (col. 18, lines 3-8), included in the logical device unit's data (logical volumes) (col. 10, lines 22-25). Carter does not explicitly teach a current state metric for each logical device unit that can be request by an accessing computer However, Beier teaches "as part of maintaining the recovery resources, the storage manager 104 or the controller 202 keeps track of the timestamp of the last hierarchical and relational log entries. The hierarchical and relational log entries. The hierarchical time stamp is compared to the last relational log in task 612, then the updates are applied to the hierarchical databases... If the a new time stamp for the last entry to the relational database (relational time stamp) is received within a designated period of time in task 616, then the method 600 again compares the hierarchical database time stamp in task 617 (hierarchical time stamp) with the relational time stamp in task 612, and if the hierarchical is less than or equal to the relational time stamp, the updated log records are applied to the remote site 200 hierarchical database. By assuring that the hierarchical time stamp, the update logs for the hierarchical database and the relational database are able to be synchronized for latter processing" (col. 8, lines 64-67 to col. 9, lines 1-19). This suggests the system access the log for checking whether the log

containing the most recent time stamp. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify updating the timestamp and utilizing the time stamp comparison process of Beier into Carter in order to access the log files to retrieve the time stamp as the current state metric in order to restore the data in the most recent state.

Regarding on claim 15, Beier teaches 1/O operations directed to a logical device unit that enables maintenance of a current state metric for the logical device unit and disables maintenance of a current state metric for the logical device unit, and wherein the controller updates the current state metric only when maintenance of a current state metric for the logical device unit is enabled (col. 8, lines 64-67).

Regarding on claim 16, Beier teaches the current state metric is a timestamp (time stamps) (col. 8, lines 37-50).

Regarding on claim 17, Beier teaches the controller updates the timestamp by saving a current time (col. 8, lines 64-67).

6. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter et al. (US. Patent No. 5,909,540) in view of Beier et al. (US. Patent No. 6,065,018) and futher in view of Mutalik et al. (US. Patent No. 6,161,111).

Regarding on claim 18, Carter and Beier teach the subject matter except for the current state metric is a counter. However, Mutalik teaches, "as the file map utilization module 143 receives the data from the mass storage sub-system 12, it will store the data in the buffer pointed to by the buffer provided in the file read command, for later transfer to the data stored 14, during a backup operation. After the file map utilization

module 43 has received and buffered all of the data, it (that is, the file map utilization module) will increment the data read counter and decrement the remaining data counter by value corresponding to the amount of data that has been received and buffered (step 168) (col. 13, lines 54-67). This teaches state metric is a counter. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify timestamps of Mutualik into Carter and Beier in order to provide the counter the indication to restoration of the backup files.

Regarding in claim 19, Carter and Beier do not explicitly teach the controller updates the counter by incrementing the counter. However, Mutualik teaches, "as the file map utilization module 143 receives the data from the mass storage sub-system 12, it will store the data in the buffer pointed to by the buffer provided in the file read command, for later transfer to the data stored 14, during a backup operation. After the file map utilization module 43 has received and buffered all of the data, it (that is, the file map utilization module) will increment the data read counter and decrement the remaining data counter by value corresponding to the amount of data that has been received and buffered (step 168) (col. 13, lines 54-67). This teaches the counter is incrementing each time the I/O operation to provide the restoration of files. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify timestamps of Mutualik into Carter and Beier in order to provide the counter the indication to restoration of the backup files.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Baoquoc N. To whose telephone number is (703) 305-1949 or via e-mail BaoquocN.To@uspto.gov. The examiner can normally be reached on Monday-Friday: 8:00 AM – 4:30 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached at (703) 305-9790.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231.

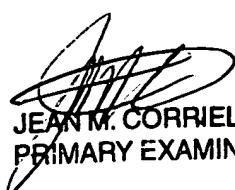
The fax numbers for the organization where this application or proceeding is assigned are as follow:

(703) 872-9306 [Official Communication]

Hand-delivered responses should be brought to:

Crystal Park II  
2121 Crystal Drive  
Arlington, VA 22202  
Fourth Floor (Receptionist).

Baoquoc N. To  
March 18, 2004

  
JEAN M. CORRIELUS  
PRIMARY EXAMINER